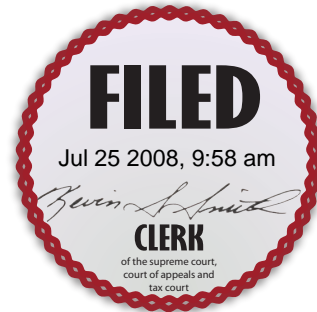


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ERVIN CRABTREE,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0711-CR-983
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven Eichholtz, Judge
The Honorable Patrick Murphy, Master Commissioner¹
Cause No.49G23-0706-FA-119444

¹ Master Commissioner Patrick Murphy heard this case and signed the abstract of judgment. Indiana Code section 33-33-49-16(e) provides that a “master commissioner shall report the findings in each of the matters before the master commissioner in writing to the judge or judges of the division to which the master commissioner is assigned.” However, section 33-33-49-16(e) also provides that master commissioners have the powers prescribed for magistrates pursuant to Indiana Code section 33-23-5-5, including the power to enter a final order, conduct a sentencing hearing, and impose a sentence on a person convicted of a criminal offense. Given the manner in which the statutes defining the powers of these judicial officers have evolved, and in conjunction with the powers specifically granted by section 33-23-5-5, we believe section 33-33-49-16(e) means that the master commissioner has to keep the regular judge apprised regarding the matters before him and not that the regular judge needs to approve by signature actions the master commissioner is authorized by section 33-23-5-5 to take.

July 25, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Following a bench trial, Ervin Crabtree was convicted of possession of cocaine in an amount greater than three grams within 1,000 feet of a school, a Class A felony. Crabtree appeals his conviction, contending that the trial court erred in admitting cocaine evidence because it was obtained as the result of an illegal detention. Concluding that Crabtree was not subject to an illegal detention because officers had reasonable suspicion to stop him, we affirm.

Facts and Procedural History²

On June 22, 2007, several Indianapolis Metropolitan Police Department (“IMPD”) officers were looking for Crabtree, the subject of several open warrants. The officers went to a house at 1419 East Marlow Avenue because Crabtree allegedly frequented that address and was suspected of dealing drugs there. The officers had with

² The pages of Crabtree’s appendix are not numbered as required by Indiana Appellate Rule 51(C) (“All pages of the Appendix shall be numbered at the bottom consecutively”). Also, Crabtree included in his appendix a copy of the presentence investigation report on white paper. Indiana Appellate Rule 9(J) requires that “[d]ocuments and information excluded from public access pursuant to Ind. Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G).” Indiana Administrative Rule 9(G)(1)(b)(viii) states that “[a]ll pre-sentence reports pursuant to Ind. Code § 35-38-1-13” are “excluded from public access” and “confidential.” The inclusion of the presentence investigation report printed on white paper in his appellant’s appendix is inconsistent with Trial Rule 5(G), which states, in pertinent part:

Every document filed in a case shall separately identify information excluded from public access pursuant to Admin. R. 9(G)(1) as follows:

(1) Whole documents that are excluded from public access pursuant to Administrative Rule 9(G)(1) shall be tendered on light green paper or have a light green coversheet attached to the document, marked “Not for Public Access” or “Confidential.”

We remind counsel that he should follow these rules in future filings with this court.

them a photo of Crabtree and other identifying information. Upon arriving at the Marlow Avenue address, the officers observed a man fitting Crabtree's physical description outside talking on a cell phone. After briefly patting the man down, the officers asked him his name. The man replied that his name was "Jeffrey Scott" and showed the officers a piece of paper with that name. When the officers were unable to verify a "Jeffrey Scott," they examined the picture and identifying information they had for Crabtree. Agreeing that the man they had encountered was Crabtree, but proceeding with caution because he claimed to be someone else, the officers decided to transport the man to an IMPD facility where he could be identified via fingerprints.

Officer Hancock briefly searched the backseat of his patrol car for foreign items, and then put the handcuffed man into his car. Officers Hancock and McAllister drove him toward the identification facility, with Officers Amminger and Veza following. En route, the man admitted he was Crabtree. The officers then went to an IMPD booking facility instead. When Crabtree was removed from the backseat of the car, Officer McAllister saw what appeared to be a pill bottle wedged between the seat cushion and seat back. Officer Hancock retrieved a pill bottle containing 3.15 grams of cocaine from the backseat of his patrol car.

Crabtree was charged with possession of cocaine with intent to deliver and possession of cocaine in an amount in excess of three grams within 1000 feet of a school, both Class A felonies. At his bench trial, Crabtree objected to the admission of the pill bottle and cocaine into evidence because "it was an illegal seizure [and] he should have never been in the police car pursuant to the facts found in the law laid down in State

versus Sanchez.” Tr. at 16-17. The trial court took the admission of the evidence under advisement until such time as he could review the case cited by Crabtree. At the conclusion of the presentation of evidence, the trial court heard argument but reminded counsel that “it’s still under advisement regarding your comment on Sanchez and the stop” Id. at 115. A subsequent hearing was set at which the trial court apparently overruled Crabtree’s objection, admitted the evidence, and found Crabtree guilty of possession of cocaine and not guilty of possession with intent to deliver.³ Crabtree was ultimately sentenced to thirty years for the Class A felony possession of cocaine conviction. He now appeals.

Discussion and Decision

Crabtree contends that the trial court erred in admitting the cocaine evidence because it was obtained as the result of an illegal detention.

I. Standard of Review

We review the trial court’s ruling on the admission of evidence for an abuse of discretion. Espinoza v. State, 859 N.E.2d 375, 381 (Ind. Ct. App. 2006). We reverse only where the decision is clearly against the logic and effect of the facts and circumstances. Id. In making this determination, we do not reweigh evidence and consider conflicting evidence in a light most favorable to the trial court’s ruling. Cole v. State, 878 N.E.2d 882, 885 (Ind. Ct. App. 2007). We also consider uncontroverted evidence in the defendant’s favor. Id.

³ We were not provided with a transcript of this hearing.

II. Admission of Evidence

Crabtree contends that the officers' identification and detention of him violated the Fourth Amendment to the United States Constitution, which provides, in pertinent part, that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated"⁴ As a general rule, the Fourth Amendment prohibits warrantless searches. Berry v. State, 704 N.E.2d 462, 464-65 (Ind. 1998). Consequently, when a search is conducted without a warrant, the State has the burden of proving that the search falls into one of the exceptions to the warrant requirement. Id. at 465.

One exception to the warrant requirement is commonly called a "Terry stop." In Terry v. Ohio, 392 U.S. 1, 21-22 (1968), the Supreme Court held that a police officer may, without a warrant or probable cause, briefly detain a person for investigatory purposes, if, based upon specific and articulable facts, the officer has reasonable suspicion that criminal activity may be afoot. Crabtree contends that the officers did not have reasonable suspicion to detain him because he was not engaged in any suspicious activity when he was approached by the officers and because none of the officers knew Crabtree personally to confirm his identity.

Crabtree cites Sanchez v. State, 803 N.E.2d 215 (Ind. Ct. App. 2004), trans. denied, in support of his argument. In Sanchez, officers attempted to serve a warrant on Antwan Luckett at his apartment. Luckett was described as an African-American male,

⁴ Crabtree also argues the detention violated his rights under Article I, Section 11 of the Indiana Constitution, but has not presented this argument in a manner that is distinct from his Fourth Amendment argument. Accordingly, Crabtree has waived this argument. See White v. State, 772 N.E.2d 408, 411 (Ind. 2002).

approximately 5'11" tall and 250 pounds. Failing to find Lockett at his apartment, the officers canvassed the surrounding area, and one officer noticed an individual who he thought fit Lockett's description leaning in the passenger window of a car approximately forty to fifty feet away. Upon approaching the individual, however, the officers realized he was Hispanic, not African-American. Nonetheless, officers requested permission to speak with the individual, later identified as Sanchez, and eventually required him to provide identification. Sanchez gave a false name and told officers he was at the apartment complex visiting his uncle. After failing to find Sanchez' identification under the false name, the officers took him to his "uncle's" apartment. The "uncle" was unable to identify Sanchez, who was then handcuffed and transported to an identification unit where he was fingerprinted and identified as Sanchez. He was arrested for an open warrant out of Illinois and searched incident to the arrest. During the search, a small quantity of marijuana was discovered.

Sanchez filed a motion to suppress, which was denied, and a jury found Sanchez guilty of one count of possession of marijuana. On appeal, Sanchez argued that the officers violated his Fourth Amendment rights. We agreed, holding that what began as a consensual encounter when Sanchez agreed to speak with the officers evolved into an investigatory stop when Sanchez was detained after the officers could not confirm his identity. No articulable facts existed at that point that would cause the officers to believe that criminal activity was about to occur: the officers knew even before speaking with Sanchez that he did not fit the description of the man they were seeking and although leaning in a passenger window can be consistent with drug behavior, the officers did not

observe any sort of transaction or interaction between Sanchez and anyone in the car. Therefore, the investigatory stop was not supported by reasonable suspicion and Sanchez's seizure was illegal. Id. at 221.

Crabtree acknowledges that the distinction between Sanchez and his case is that Crabtree did resemble the photograph and description the officers had of the man they were seeking. Nonetheless, he contends that because none of the officers "could officially confirm that he was the individual in the photograph[;] 1419 East Marlowe is not where Crabtree resided[;] Crabtree was not behaving suspiciously[; and] the name Crabtree gave came back with nothing on file," there was no reasonable suspicion for his detention. Brief of Appellant at 10-11.

The officers here were dispatched to an address at which a person with four outstanding warrants was believed to be associated. The officers had in their possession a photo and physical description of the man they were seeking. When they arrived at the address, they saw a man outside the house talking on his cell phone. The man did not admit to being "Ervin Crabtree" when asked by the officers and no information came back on the name he gave as his own. However, the man fit the description and resembled the photo of the man the officers were seeking on several warrants. That alone was sufficient to raise a reasonable suspicion warranting further investigation, see Wilkinson v. State, 743 N.E.2d 1267, 1271 (Ind. Ct. App. 2001) (holding that police stop of man driving a truck who fit the physical description of the truck's registered owner who was known to have a suspended driver's license was supported by reasonable suspicion), trans. denied, and Crabtree was therefore not subject to an illegal detention.

Conclusion

Because Crabtree's detention was supported by reasonable suspicion, the drugs found during the subsequent investigation in a location where only Crabtree could have left them were properly seized and the trial court did not abuse its discretion in admitting the cocaine into evidence.

Affirmed.

BAKER, C.J., and RILEY, J., concur.